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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/583,254

10/27/2008

Gabriel Martinez Navarro

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1782

NOTIFICATION DATE

DELIVERY MODE

09/28/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

sughrue@sughrue.com  
PPROCESSING@SUGHRUE.COM  
USPTO@SUGHRUE.COM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/583,254	MARTINEZ NAVARRO, GABRIEL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven L. Weinstein	1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/16/06</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayhurst (3,156,352), in view of Navarro (6,589,578), Tuazon et al (EP545025) and Melnick (GB1253271), further in view of Richards et al (EP1201562), Acknin et al (5,962,052) and applicants admission of the prior art..

In regard to claim 1, Hayhurst discloses a package for the preparation of food products comprising a dried food product and a container which is designed to house the dried food product until it is to be used, wherein the container comprises a bag having at least two compartments which are separated from one another by a pressure breakable welded seam, a pre-determined quantity of dried food housed in one compartment and a pre-determined quantity of water being housed in another compartment. Claim 1 recites that the dried food is dried egg. Hayhurst is silent in regard to dried egg. However, Hayhurst is seen to be a generic teaching, applicable to any dried food that requires water for reconstitution and further preparation. In fact, although Hayhurst specifically discloses milk powder and water, soup stock and water, and flour and water, Hayhurst also refers to generic dehydrated foods and water (e.g., col. 4, para. 1). Therefore, Hayhurst is seen to fairly teach that it would have been obvious to substitute and package any conventional dried food, including dried egg, which would require water for reconstitution, for the conventional dried foods disclosed;

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especially since Navarro, Tuazon et al and Melnick disclose that dried eggs, were, of course, conventional and that it was well established to package dried eggs. Richards et al and Acknin et al are relied on as further evidence of the conventionality of compartmented containers wherein the compartments separately contain dry edibles and water, respectively and the partition therebetween is openable to allow the products to mix. Applicants admission of the prior art, on page 1 of the specification, further evidences that the rupturable compartment divider concept, to allow the mixing of contents, was known. In regard to claim 2, Hayhurst, as well as Richards et al and Acknin et al, all disclose that the bag is formed of at least one sheet of flexible material. In regard to claim 3, Hayhurst discloses that the bag is heat welded throughout at least one part of the perimeter (e.g., #12). Claim 4 recites that the sheet is a flexible material formed by a laminate comprising at least one outer layer of polyester barrier and at least one inner layer of peelable polyethylene. The particular conventional packaging materials one employs is seen to have been an obvious result effective variable routinely and obviously determinable. Polyethylene/polyester laminates are well established in the art. It is noted that Hayhurst discloses one can employ a laminate having an outer layer plastic for strength, a plastic layer that provides imperviousness and an inner plastic heat seal layer and Richards et al discloses an outer layer of polyester and inner layers of polyethylene and Surlyn (which is an ethylene ionomer), (which is known to be as good if not better than polyethylene in peeling contexts). In regard to claims 7-9, Tuazon et al discloses it was well established to package other ingredients along with dried egg in the same package, such as starch and bicarbonate

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(e.g., Example 1) and to modify the combination and bring together ingredients known to be associated with each other and packaged together, and package them in the same compartment, would therefore have been obvious. In regard to claim 10, Navarro discloses it was well established to provide a dried egg package with a scale to communicate the amount of the product, and to modify the combination and provide a scale for its art recognized and applicant's intended function of allowing one to know the quantity of the product therein would therefore have been obvious.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-4 above, and further in view of Yializis (2003/0068459).

Claim 5 recites that the sheet has an intermediate barrier layer which is ceramic coated polyester. As noted above, Hayhurst discloses that to provide packaging with a barrier layer is notoriously conventional. Yializis (e.g., para. 0133) discloses that applicant is not the inventor of ceramic coated polyester, nor is he the first to employ it as a barrier layer. To modify the combination and employ the recited material for its art recognized and applicant's intended result would therefore have been obvious in view of the art taken as a whole. In regard to claim 6, note that Yializis also discloses the conventionality of employing a sheet that is at least partly transparent. It would be common sense to employ conventional transparent packaging materials if one wanted the contents to be viewable.

The remainder of the references cited on the PTO892 forms are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-3:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1782

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